

**ZONING LOCAL LAW
TOWN OF KIRKWOOD**

**ARTICLE XII
COMPOSTING**

Local Law #2-2008 - Adopted March 4, 2008

SECTION 1201. Purpose and Intent

The purpose and intent of the Composting District of the Town of Kirkwood, New York, is to guide the future development of the Town in regard to the establishment and location of commercial composting activities in Agricultural/Rural Residence Districts of the Town so as to:

- A. Safeguard the character of the surrounding area;
- B. Protect the health, safety and welfare of the neighborhood; and
- C. Provide pertinent regulations to insure the compatibility of composting use with the surrounding uses.

SECTION 1202. Scope and Authority

A Composting ("C") District shall be considered as overlaying any portion of an Agricultural/Rural Residence District so designated by the Kirkwood Town Board as provided hereafter.

Overlay zoning districts are established through rezoning and only in conjunction with base-zoning districts. The C overlay designation shall be combined with the A/R-R District designation in which the C overlay district is established. Except as modified by the overlay zoning district, the provisions of the applicable base-zoning (A/R-R) district shall apply to all development within the boundary of the designated area. If there are conflicting regulations, the applicable overlay zoning district regulations shall prevail.

SECTION 1203. Designation of District Area

Commercial Composting shall be allowed in areas of the Agricultural/Rural Residence District at any location deemed appropriate and so designated as a Composting District by the Town Board, provided, however, that the Town Board shall consider the factors specified in Section 1205 in determining whether to create a Composting District.

SECTION 1204. Permitted Uses and Other Regulations

- A. Principal Use:
Commercial Composting Facility as defined in Section 201A 10a of this Zoning Local Law
- B. Accessory Uses:
Accessory buildings and uses related to the principal use of the property
- C. Maximum Density Permitted
More than one (1) principal building may be permitted after Site Plan Review.
- D. Minimum Lot Required Area: 5 acres
- E. Minimum Yard Required for Principal Use Front: 50 feet
Each side: 50 feet Rear: 50 feet

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F. Minimum Yard Required for Accessory Use Front: 50 feet
Each side: 50 feet Rear: 50 feet

G. Maximum Lot Coverage by Buildings: 80%

H. Maximum Building Height: Same as AIR-R District

I. Required (off street) Parking: Same as AIR-R District

J. Required (off street) Loading: Same as AIR-R District

K. Lighting

May be illuminated by a steady light provided such lighting does not illuminate adjacent property. Flashing, oscillating and revolving lights are not permitted.

L. Maintenance and Repair Facilities:

All waste fluids must be collected and disposed of according to best management practices. A spill prevention plan shall be required.

M. Signs: Same as "B-1" District

N. Site Plan Review

The Town Planning Board shall review site plan and such additional information as necessary in accordance with Section 502 of the Town of Kirkwood Zoning Local Law and shall ascertain that all the provisions of state laws regulating composting are complied with.

SECTION 1205. Procedure for Obtaining a Change in Zone.

The procedure for obtaining a change in zone to permit development as a Composting ("C") District shall be as follows:

A. The owner (or agent thereof, hereinafter referred to as "owner") of the land shall apply in writing and shall submit four (4) copies of a preliminary development plan and application for change of zone as described in part B of this section to the Town Board, which shall refer the same to the Planning Board to prepare recommendations with regard to the preliminary development plan and the proposed change of zone.

B. Such preliminary development plan shall include at least the following information:

1. The applicant shall submit a vicinity map delineating zoning and land use, residences, surface waters, access roads, and other existing and proposed features within the proposed district and within one-half mile of the proposed district.

2. Applicant shall submit a site plan map (minimum scale of 1:600 with 5 foot contour intervals) that shows:

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- a. the location of the proposed facility;
 - b. the facility drainage characteristics, identifying the direction of both site run-on and run off, ditches, and swales together with any run-off controls that exist or will be implemented with facility construction;
 - c. the location of all processing areas and storage areas;
 - d. the location of all residences, public contact areas and buildings, including the identification of any buildings which are owned by the applicant or operator, on-site and within 800 feet of the site;
 - e. the location of access roads and roads on-site;
 - f. the location of property boundaries;
 - g. the location of all potable water wells and surface water bodies on-site and within 500 feet of the site;
 - h. the location of all drainage swales on-site and within 100 feet of the site;
 - i. existing and proposed elevation contours and the direction of prevailing winds;
 - j. the location and classification of any regulated wetlands and the location of any floodplain within 500 feet of the site; and
 - k. compliance with MS4 regulations.
3. Applicant shall submit a detailed description of the source, quality, and quantity of all solid waste to be processed, including the source, quality, and expected quantity of any bulking agent, amendment, admixture, or seed material. The description must include the annual input and any seasonal variations in the solid waste type and quantity, and the appropriate quality data, as determined by the town code department.
4. Applicant shall submit engineering plans and specifications for the facility that include:
- a. a description of the facility;
 - b. the type, purpose, size, and associated detention times for the handling, processing, and storage and calculations that demonstrate that all equipment and structures have sufficient capacity for the material that will be accepted;
 - c. the method of measuring, shredding, mixing, and proportioning input materials;
 - d. a description and the capacity of the storage facilities used for amendment, bulking agent, admixture, solid waste, and product;

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- e. a description of all pre-processing and post-processing methods and equipment used to identify and remove all nonprocessable materials and a copy of all agreements or educational activities that will be used to outline acceptable materials for the facility;
- f. the separation, processing, storage, and ultimate disposal location for nonprocessable materials;
- g. a process flow diagram of the entire process, including all major equipment and flow streams. The flow streams must indicate the quantity of material on a wet weight, dry weight, and volumetric basis;
- h. an outline of the processing time duration, including the time period from acceptance of waste to completion of composting and curing (or treatment) to the distribution of the product;
- i. if windrows are used, pile dimensions including width, length, and height;
- j. the air emission collection and control equipment, if used;
- k. the method to control surface water run-off and to manage leachate, including the method for treatment or disposal of leachate generated. For uncovered sites, calculations of the leachate that must be handled at the site, based on a rainfall intensity of one-hour duration and a 10-year return period; and
- l. for facilities that will use a low permeability soil to minimize leachate release, a construction quality assurance/construction quality control plan as outlined in Section 360-2.8 of Part 360-5 of the DEC regulations. If a geomembrane will be used, the applicable information required in Subpart 360-2 must be submitted.

5. Applicant shall submit a description of the operation of the facility, including:

- a. the schedule of operation including the days and hours that the facility will be open;
- b. the daily traffic flow to and from the facility; and
- c. the procedure that will be used for unloading trucks.

6. Applicant shall submit a monitoring, sampling, and analysis plan that outlines:

- a. the location, purpose, frequency and method for all monitoring points in the process;
- b. the location, purpose, frequency and method for waste and product sampling; and
- c. the protocol used to obtain representative samples, the preparation and preservation of samples, and the laboratory that will be used for analyses.

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7. Applicant shall submit a product maturity and distribution plan that includes:
- a. an outline of the method that will be used to determine product maturity, including proposed standards for maturity and the monitoring methods or other means that will be used to measure maturity
 - b. a description of the ultimate use for the finished product, including the quantity of product each user is expected to take, the frequency of distribution, the expected use of the product, and the source of this information (contract, phone survey, etc.);
 - c. the method for removing product from the facility;
 - d. a description of the proposed use or disposal of product that cannot be used in the expected manner due to poor quality or change in market conditions; and
 - e. a copy of the label or other information source for the product.
8. Applicant shall provide:
- a. the name of the owner of the facility and the property;
 - b. a list of the facility personnel and their respective responsibilities;
 - c. a contingency plan that describes the corrective actions to be taken in the event of equipment breakdowns, delivery of unacceptable waste to the facility, spills, fires, noise and vectors;
 - d. an operation and maintenance manual that contains general design information and detailed operational information and instructions. In addition, the manual must list the procedures used for sampling and analyzing the solid waste and product, process monitoring, and record keeping;
 - e. an odor management plan that outlines how the production and migration of odorous compounds will be minimized, including design and operational practices. The plan must also include specific steps that will be taken during the operation of the facility to address complaints and actions that will be taken if unacceptable odors in areas beyond the property line of the facility; and
 - f. a closure plan for the facility as outlined in DEC regulation 360-1.14(w) including site testing to verify that there are no adverse environmental or health impacts.
9. Applicant shall attest under oath that the facility will be exempt from requiring a DEC permit because:
- a. the facility is to be operated in a manner that does not produce dust or odors that unreasonably impact on neighbors of the facility, as determined by the New York State Department of Environmental Conservation,
 - b. no material accepted at the facility will remain on-site unprocessed for more than 36 months,

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c. the facility will accept no more than 3,000 cubic yards of yard waste per year, not including brush or other wood materials that are not intended for composting, and

d. the facility will only accept a combination of wastes that would be exempt if operating individually for each type of waste.

Applicant will further attest under oath that if at some future date the facility will not be exempt, he will timely file an application for DEC registration or a DEC permit as required.

10. Applicant shall attest under oath that if the Composting District is established by the Town Board, the facility will be constructed and operated in compliance with the following conditions:

a. unprocessed material does not remain on-site for more than 36 months;

b. the process uses acceptable amendments or bulking agents and follows an acceptable method of composting that minimizes odor generation and results in a mature product;

c. the facility is constructed to minimize any ponding on the composting area; and

d. the facility is at least 200 feet from the nearest surface water body, potable water well, and residence or place of business, excluding the generating business and any residence or place of business built after the facility began operation. This separation distance requirements may be increased to 500 feet in densely populated or otherwise sensitive areas, as determined by the Planning Board.

C. The Planning Board, after determining that the requirements of the Zoning Local Law dealing with a Composting District have been met, shall recommend the approval, approval with modifications, or disapproval of the zone change to the Town Board. The Planning Board shall enter its reasons for such action in its record, and transmit its findings by resolution to the Town Board within seventy-five (75) days of receipt of the referral. Failure to act within seventy-five (75) days of receipt of the referral unless such time is extended by the applicant will permit the Town Board to act without the Planning Board's recommendation. The Planning Board may recommend the establishment of a Composting District provided that it finds the facts submitted with the preliminary development plan establish that:

1. the uses proposed will not be detrimental to present and potential surrounding uses, in particular not in close proximity to present or potential residential neighborhoods;

2. the proposed change to a Composting District is in conformance with the general intent of the Comprehensive Plan of the Town of Kirkwood;

3. existing and proposed streets are suitable and adequate to carry anticipated traffic within the vicinity of the proposed district;

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4. existing utility services are adequate for the proposed development;
5. the proposed development, as it is proposed to be completed, contains the required landscape and land use areas necessary for creating and sustaining a desirable and stable environment, and
6. visual buffers have been incorporated into the landscaping plan

D. After receipt of the Planning Board's written recommendations, public notice shall be given and a public hearing held by the Town Board. The Town Board shall also take whatever steps are necessary to comply with the New York State Environmental Quality Review Act, and the public hearing on the application may be combined with a public hearing on any draft environmental impact statement which the Town Board may require.

1. At least seven (7) days prior to the public hearing, the applicant shall send notice thereof by certified mail, return receipt requested, to the owners of record of all properties referred to in Section 1405 hereof. Prior to ~ the public hearing, applicant shall submit to the Town Clerk an affidavit sworn and subscribed before a notary public containing the following information: the names and addresses of all such property owners; a statement verifying that all such property owners' names and addresses are contained on the list; and a statement that all such property owners were properly served. Applicant shall simultaneously also submit the certified mail return receipts for all property owners served along with the affidavit. The cost of preparing, publishing and mailing the required notices shall be borne by the applicant. The Town Board shall cancel the public hearing if the applicant fails to submit all of the required information.

2. The Town Board shall conduct the public hearing, affording all interested persons an opportunity to speak. At the conclusion of the public hearing, the Town Board shall direct the applicant to submit any additional information it determines is necessary to a determination of the application, if any. The Town Board shall formally act on said application no later than sixty-two (62) days after the public hearing.

3. Prior to acting upon said application, the Town Board may obtain a written recommendation from the Town Planning Board as to whether the Composting District shall be created, and the Town Planning Board shall furnish such recommendation within 45 days after a request therefor from the Town Board.

E. If the development plan is accepted by the Planning Board, the facility must be constructed and operated in compliance with the following conditions:

1. unprocessed material accepted does not remain on-site for more than 36 months;
2. the process uses acceptable amendments or bulking agents and follows an acceptable method of composting that minimizes odor generation and results in a mature product;
3. the facility is constructed to minimize any ponding on the composting area; and

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4. the facility is at least 200 feet from the nearest surface water body, potable water well, and residence or place of business, excluding the generating business and any residence or place of business built after the facility began operation. This separation distance requirements may be increased to 500 feet in densely populated or otherwise sensitive areas, as determined by the Planning Board.

F. After the public hearing the Town Board may amend the Zoning Local Law so as to define the boundaries of the Composting District, but such action shall have the effect only of granting permission for development of the approved preliminary development plan proposal, in accordance with the Zoning Local Law within the area so designated. If the zone change is approved by the Town Board, appropriate notation to that effect will be made on the face to four (4) copies of the preliminary development plan. One (1) copy will be retained by the Town Clerk, one (1) copy will be given to the Planning Board, one (1) copy will be returned to the owner, and one (1) copy given to the Town Building inspector.

G. Every Composting District shall remain in existence from the date of its creation and approval and during the periods that a Special Use Permit is issued pursuant to the provisions of section 1206 hereof, or upon the abandonment of composting activities therein (either upon the termination of the composting permit term without renewal or otherwise) whichever is later. Upon the permanent termination of composting operations therein, the owner of the premises or the person responsible for the operations conducted therein shall commence reclamation of the premises in accordance with the Closure Plan. If the responsible person has not commenced closure within sixty (60) days following the permanent termination of composting activities or fails to complete closure in accordance with the Closure Plan, the Town may take whatever steps are necessary to accomplish or complete said closure, including resort to litigation and resort to the undertaking provided by the composting operator upon the granting of the permit. The composting operator shall advise the Town Planning Board in writing upon the commencement and completion of closure.

SECTION 1206. Issuance of Composting Special Use Permit.

A. The Town Board hereby authorizes the Town Zoning Board of Appeals to issue Composting Special Use Permits in accordance with the provisions the Zoning Local Law. No Person shall do, conduct, perform, or engage in composting or operate a composting facility within the Town, except within a Composting District and except pursuant to a Composting Special Use Permit issued by the Town Zoning Board of Appeals in accordance with the procedures set forth in this subsection; unless the facility requires a DEC permit and is operated strictly in accordance with the provisions of that permit.

B. Applicants for a Special Use Permit shall submit to the Town Zoning Board of Appeals a copy of the application submitted by such person to the Town Planning Board for site plan review of said project.

C. The Town Zoning Board of Appeals shall consider the application for a Special Use Permit at its next regular meeting following ten (10) days after receipt of the application. The Town Zoning Board of Appeals, in conjunction with the applicant, shall establish its own procedure and timetable for the determination of the application, subject to the requirements of Section 274-b of the Town Law.

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D. When the applicant has submitted a complete application, the Town Zoning Board of Appeals shall grant and approve Special Use Permit which meets the criteria and any conditions established by the Town Board and Planning Boards. In addition thereto the following shall be conditions of said Special Use Permit:

1. The Applicant shall grant the Town Commissioner of Public Works" Town Supervisor, Town Building and Code Inspector, Town Engineer (or designated Town Consultant) and members of the Town Board a license to enter upon the Site with reasonable prior notice to Applicant to determine that these conditions are being fulfilled and complied with notwithstanding any signs or other notices purporting to limit access to the Site.
2. The Town Commissioner of Pubic Works, Town Supervisor, or Town Building and Code Inspector shall have the authority to issue a written notice of violation where he or she determines that the Special Use Permit conditions are being violated; upon such written notice, the applicant shall have a reasonable amount of time, at least 2 weeks, to cure such violations; if the violations persist and are found to be significant, the Board shall have the authority to revoke the Special Use Permit for good cause; the Applicant shall have the right to a hearing prior to any such Special Use Permit enforcement action.

E. Term of the Special Use Permit. The term of the Special Use Permit shall be three (3) years.

F. Renewals. The applicant shall, upon the expiration of each Special Use Permit period, obtain renewal for a like term by filing an application therefor with the Town Zoning Board of Appeals on a form prescribed by the Town Zoning Board of Appeals. In entertaining said renewal application, the Town Zoning Board of Appeals shall consider, to the extent appropriate and applicable, the same factors considered by the Board for an initial application, together with the performance of the renewal applicant under previous permits.

G. Inspections and Reports.

1. The Town Board, the Town Building and Code Inspector, and any engineer engaged pursuant to this subsection shall conduct such periodic inspections, on reasonable notice to the operator, as they shall deem necessary to ensure compliance with the terms of the Special Use Permit and this section.
2. The Town Board may use the Town Building and Code Inspector to inspect each composting operation to determine on a systematic basis its compliance with the Special Use Permit and the provisions of this section and to report such determination to the Town Board. The Town Board may devise a schedule for the orderly and systematic inspection of each mining operation.
3. At least thirty (30) days prior to the anniversary of the granting of a Special Use Permit, each operator shall submit a report, certified by the applicant, showing graphically and by narrative the extent of the operations carried on over the previous year, including any variance from the permit. If the Town Zoning Board of Appeals finds the report or applicant's compliance with the Special Use Permit to be defective or deficient in any way, it may consider its

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expenses of discovering or remedying any such defect in establishing the fee upon the next occurring renewal of the Special Use Permit.

H. Violations. The Town Zoning Board of Appeals and the Town Building and Code Inspector shall report, in writing, any violations of the Special Use Permit, any violation of this section of the Zoning Local Law, or any apparent violations of applicable United States, New York State or local statutes, local laws, codes, rules or regulations to the Town Board and to the Town Attorney, who shall take whatever steps are available under the Zoning Local Law or any other law to remedy such violations.

For a violation of this Article XII of the Zoning Local Law or a violation of any provision, term or condition of a Special Use Permit issued pursuant to Article XII hereof, the provisions of Section 1406 of the Zoning Local Law shall be applicable. Nothing herein shall prevent the Town from pursuing and enforcing remedies and sanctions pursuant to law.